Exhibit G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. NAVELLIER & ASSOCIATES, INC., et al., Defendants.	Civil Action Nos. 1:17-cv-11633-DJC 1:19-mc-91227-DJC

BEFORE THE HONORABLE MARIANNE B. BOWLER
UNITED STATES MAGISTRATE JUDGE

MOTION HEARING

July 8, 2019

John J. Moakley United States Courthouse
Courtroom No. 25
One Courthouse Way
Boston, Massachusetts 02210

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Proceedings recorded by sound recording and produced by computer-aided stenography

P R O C E E D I N G S

(Recording begins at 12:11:04)

THE COURT: All right, Mr. Putnam.

THE CLERK: United States District Court for the District of Massachusetts is now in session, the Honorable Marianne B. Bowler presiding. Today is July the 8th, 2019, in two cases, the *SEC versus Navellier & Associates, Inc., et al.*, which is Civil Action 17-11633, and the *SEC versus Navellier & Associates, Inc., et al.*, which is Miscellaneous Case 19-91227.

THE COURT: 222. I have it as 222.

THE CLERK: 91227.

THE COURT: 227, all right.

THE CLERK: Would counsel please identify themselves for the record.

MS. CARDELLO: Good afternoon, Your Honor. Jennifer Cardello, and with me, my colleague, Mark Jones, from the Securities and Exchange Commission.

MR. JONES: Good afternoon, Your Honor.

THE COURT: Thank you.

MR. AUDLEY: Good afternoon, Your Honor. David Audley, Law Firm of Chapman and Cutler, Chicago, Illinois, on behalf of the third-party subpoenaed Respondents, First Trust Advisors and First Trust Portfolios.

THE COURT: Thank you.

MR. KORNHAUSER: Good afternoon, Your Honor. Samuel

Kornhauser for the Defendants, Navellier & Associates and Louis Navellier.

THE COURT: Okay. Thank you very much.

Well, we have the two motions, the original motion, Docket Entry Number 1, and Docket Entry 212. So we'll start with 212, the motion for reconsideration.

MR. KORNHAUSER: Thank you, Your Honor. We believe that in light of what's gone on after Your Honor's initial ruling -- you initially ruled that if we could narrow the subpoenas, we did, we narrowed them down to a little over three years. We narrowed the scope of the subpoenas, and we took the person most knowledgeable at the SEC's deposition, who was Mr. Robert Baker, and in the course of that we tried to find out the reasons why the SEC was, what we contend, selectively enforcing against our client, why they changed the settlement terms, why the SEC was trying to punish Navellier for not agreeing to the initial settlement terms that the parties had agreed to.

In every instance, the SEC -- SEC's attorney instructed Mr. Baker not to answer those questions, taking the position, one, that they were subject to the deliberative privilege, and that Your Honor had ruled that we couldn't get into that -- those matters. Respectfully, I don't believe that Your Honor limited us to that. In fact, you allowed us to do additional discovery if we could narrow the issues. We believe

that Your Honor -- it was an interim ruling. Your Honor can sua sponte open or reconsider that decision, but importantly, Your Honor, a major part of the case, certainly for us, is this selective enforcement. And the discovery that we have obtained, it's clear that numerous investment advisory firms were marketing the -- this AlphaSector performance record, the same thing that we're accused of, the exact same performance record. The SEC chose, for whatever reason, to not enforce against them but to enforce against us, and we've tried every which way possible to find out why the SEC is treating my clients differently than all the other -- not all the other -- well, actually, all the other investment advisory firms that were involved in this. And we're entitled to do that.

We cited, Your Honor, I think it's probably the seminal case in this area, In Re: Subpoena, 145 F.3d 1422. That's a DC Circuit case, and it established -- or I guess clearly enunciated that if there's Government misconduct, which we've alleged and I think we've demonstrated with regard to this selective enforcement and the SEC reneging on their agreement and then coming back and trying to punish our clients.

We had this case resolved and settled with the settlement against Navellier -- by Navellier & Associates for $714,000. The case was settled. It was agreed to. It was

negotiated over a few months, and then when we agreed to those terms, the SEC came in and added new terms, censure, willful misconduct, which would have been very detrimental to my client's ongoing business. When Mr. Navellier and Navellier & Associates said "Wait, we've got a settlement agreement and now you've added new terms," the SEC took the position, okay, we're going to punish you. Either you accept these new terms, or not only are we going to go after Navellier & Associates, and we're not going to go after Navellier & Associates for what -- the SEC conceded. They laid out in a memorandum the basis for this $714,000 and that the -- which consisted of about $345,000 in disgorgement, actual supposedly wrongfully gained money and some penalties and interest.

When Mr. Navellier wouldn't agree to the changed terms after we'd already agreed to the settlement, the SEC said, okay, we're coming after you, and they have. That $345,000 ballooned into $23 million. That's what they're seeking in this case, $23 million, because my clients wouldn't agree to changed terms. They also came after Mr. Navellier.

They've admitted -- Mr. Baker in his person most knowledgeable -- his 30(b)(6) deposition admitted that the settlement that was being proposed was only -- would have been a settlement with no claims against Mr. Navellier. When we wouldn't agree to the changed terms, all of a sudden --

THE COURT: Well, were they changed or had they just

not been inked?

MR. KORNHAUSER: Your Honor --

THE COURT: I mean, you reached a money number, but at that time did anybody have a rough settlement agreement?

MR. KORNHAUSER: We did. Well, I guess we've got a dispute about that.

THE COURT: Well, you know, as somebody who has done over 650 mediations in this Court, you know, to have the settlement agreement, you have to have everything, and if it's -- usually in a case of this nature, it's just not a number. The terms have to be agreed upon, and it's not a settlement agreement until those terms have been reached.

MR. KORNHAUSER: Well, Your Honor, the terms were reached from our perspective. Our clients, including former counsel that were negotiating this on --

THE COURT: Well, was there a draft agreement or had you just reached a number?

MR. KORNHAUSER: No, it wasn't just a number. It was terms. The terms were, and it was laid out and there was a draft. These are -- this is the number, this is how we got here. There was no mention of settlement -- I mean of censure. There was no mention of willful misconduct. It was going to be along the lines that the SEC had settled with other -- with other investment advisory firms, none of which contained this censure provision, none of which contained the willful conduct.

So that was a given.

All that was being negotiated was the dollar amount, and there was an agreement that was reached that the dollar amount would be $714,000 and change. And then the SEC -- that was the agreement.

And when the SEC came to send over the, quote, order, the settlement agreement, they had added these new terms. So there was an agreement. The SEC claims there wasn't, but our side claims that there was. And then this new term -- excuse me, these new terms were added, which was not negotiated or agreed to, and so the -- we submit that the settlement was breached by the SEC. The SEC claims that, no, we had other terms and we happened to lay them out in this new proposal. And as punishment for Navellier & Associates not agreeing to it, the SEC has now upped their claim which they admitted. They admitted there was only $345,000 in real disgorgement, and now they upped that to $23 million to intimidate Navellier into another settlement.

And even after that was done, a couple of months later, when it was obvious that the SEC was going to ruin Navellier's business, we agreed to that. We agreed to the censure and we agreed to the willful misconduct, and the SEC said no. They rejected their own settlement terms and have proceeded to come against Navellier, who didn't do anything different than any of these other investment advisors that they

haven't gone after, that they haven't enforced against, and that's the whole point.

Your Honor, the reason I'm here is we're entitled to get that discovery. We're entitled to find out, was there really a settlement, were they motivated by bad faith in trying to punish Navellier for not agreeing to a settlement that he agreed -- that he believed was agreed to. Why are they coming after Navellier, why are they trying to ban both Navellier & Associates and Mr. Navellier.

THE COURT: Okay. Let me hear the response, which is Docket Entry 213, for the record.

MR. JONES: Your Honor, I suspect that a lot of what Mr. Kornhauser said was familiar to the Court. That's because he said it many times here before. We are here on a motion for reconsideration of a ruling about two depositions that Mr. Kornhauser wants to take of two, one current, one former, senior Commission officials. The Court ruled based on -- at least the Court's ruling from the bench was largely about the Morgan Doctrine, and we haven't heard anything new today, no new law, no new facts, no clear manifest error. We haven't even heard anything about the Morgan Doctrine.

Pages 6 to 19 of the motion -- or rather it's labeled a "Memorandum," but it doesn't seem to come with a motion.

THE COURT: No. I noted that for the local rules. Mr. Kornhauser, you file a motion in this Court, you file a

supporting memorandum.

MR. KORNHAUSER: Sorry, Your Honor.

THE COURT: It seems to be all wrapped into one.

MR. JONES: So Pages 6 to 19 of Docket 212 are a verbatim cut-and-paste copy of the previous motion. It's just not the purpose of a motion for reconsideration. It's actually abuse of that motion to just come here and try to get a second bite of the apple and to take the Court's time with that.

I don't want to get into much of what Mr. Kornhauser said, but I've heard this many times before, and if there was in fact a settlement agreement, there would be documentation of that. All there is is a -- which would have gone to his clients, and he would have it and he would be able to show it. All he has is an order that we sent over with the terms that he claims we have it, which previously counsel said "We're not accepting those terms. In fact, we don't want to negotiate with you anymore." Literally, they said "We will not negotiate with the Boston office anymore. We are going to submit our own settlement offer to the Commission."

The other thing about what Mr. Kornhauser says is that all the correspondence from the Commission says there is no settlement agreement until the Commission votes. I can't bind, Ms. Cardello can't bind the Commission. They're appointed by the President. They sit up there until they vote. There is no agreement, which is why Defendants have to make an offer that

we pair with an order. We sent them an order that we thought they could compare an offer with. But they didn't make an offer. That offer has to go and get voted on by the Commission; do they want to accept it.

I know Mr. Kornhauser has been pushing this theory a lot, but it's just not based on the facts, and it doesn't have any bearing on the motion for reconsideration, because everything he just talked about happened far prior to when the motion was decided, so there's nothing new there, and I ask that 212 be denied based on that.

Thank you, Your Honor.

THE COURT: Briefly.

MR. KORNHAUSER: May I respond briefly?

THE COURT: Very briefly.

MR. KORNHAUSER: Yes, Your Honor. There's a lot that's happened. Since then we took the depositions of Wells Fargo, of Beaumont. We found out that there was what the folks that were similarly situated to our clients did and why the SEC -- or that the SEC didn't even discuss enforcement with them when we did the exact same thing.

Part of the SEC's claim is that we didn't do due diligence before we started marketing this allegedly false performance record. None of the other ones did. And we're entitled to know why the SEC came after us when we did the same thing that everybody else did that they didn't enforce against.

And with regard -- the argument was that -- and I believe the reason that Your Honor denied our request to take Ms. Avakian, who was intimately involved in this, she was the one that decided whether or not -- she's the one that decided to change the terms of the settlement that had been presented to us, and that had been agreed to, and that's a factual issue, Your Honor. A jury is going to decide whether Mr. Jones is correct and there was no settlement, it was just negotiations, or whether there was a settlement and whether the SEC is acting in bad faith trying to punish us for not agreeing to changed terms, and even later we did agree to it. And I believe that we're entitled to -- that's an important part of the selective enforcement defense that we've got is whether or not the SEC was acting in bad faith when they chose to enforce against my clients and not others, and that's the whole Government misconduct exception to the deliberative process privilege.

And I believe -- and respectfully, Your Honor, we've made enough of a showing, including discovery that took place afterwards, to show that we're entitled to get into that. Even Mr. Baker admitted that Ms. Avakian, who claims she had no involvement when Your Honor ruled, he's admitted that Ms. Avakian was there. She's the one who was there when the presentation was made to the SEC. She's the one that decided on the changed terms. She's the one that decided to recommend to the SEC that enforcement be taken because we didn't agree to

the changed terms. I mean, she's up to her neck in this thing. We're entitled to find out why.

THE COURT: All right. At this time I make a ruling on Docket Entry 212, the motion is denied, this Court not -- this Court finding no new evidence of significance nor any significant additional law.

All right. Moving on to Docket Entry Number 1 in the second case, Miscellaneous Case 19-91227. So I'll hear you.

MR. AUDLEY: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. AUDLEY: Your Honor, we're here on a motion to quash. It was originally filed in the U.S. District Court in Chicago -- that's where the client's location was -- for both documents and a deposition, a 30(b)(6) deposition.

THE COURT: Right, right.

MR. AUDLEY: Your Honor -- Your Honor, we've had one conversation with the SEC over the telephone and then I met counsel in Chicago, and we then checked the docket and Your Honor's ruling of February 19th, 2019. And we looked at that ruling; we interpreted it as best we could. Obviously we were not here, and we realized that Your Honor had previously looked at at least the document and the topics for the 30(b)(6) and had quashed those subpoenas for the reasons that Your Honor stated in the open record, and I believe those were as to Beaumont, apparently now a deposition has been taken, LPL and

CERTIFICATE OF OFFICIAL REPORTER

I, Linda Walsh, Registered Professional Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing transcript is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter to the best of my skill and ability.

Dated this 22nd day of July, 2019.

/s/ Linda Walsh

Linda Walsh, RPR, CRR

Official Court Reporter